

CHILDREN'S DUTY SCHEME PLANS ELIGIBILITY CRITERIA



BACKGROUND

The Children's Hearings (Scotland) Act 2011 made major changes to:

- the operation of children's hearings
- the bodies responsible for its administration and management
- the relevant legal aid provisions

One of the key changes introduced by the 2011 Act is the identification of certain defined limited circumstances where children's legal aid is automatically available without the application of a merits or means test. Those circumstances are where:

- there are proceedings before a sheriff for variation or termination of a child protection order
- the hearing follows the making of a child protection order
- a hearing or pre panel hearing considers it may be necessary to authorise the placement of a child in secure accommodation
- the hearing follows the child being apprehended by the police if it has been decided that criminal proceedings are not going to be pursued

Provision is made in the legislation for Scottish Ministers to extend or restrict by regulations the circumstances in respect of which children's legal aid is automatically available. Automatic legal aid is being made available through the introduction of a duty scheme which the Scottish Legal Aid Board (SLAB) will operate.

SLAB's responsibility for providing representation at these hearings is limited to providing cover for the child. It does not extend to other parties who may be involved. Representation for any such other parties who wish to be represented at emergency hearings will be done through ABWOR subject to their solicitor being satisfied that the applicant qualifies financially and that the merits tests for representation are met. In such cases the merits tests is not applied by SLAB but by the solicitor acting. These grants will, however, be subject to back end checking broadly in line with the approach used in criminal ABWOR.

OPERATION OF THE DUTY SCHEME

The duty plans will usually run for a 12 month period. Allocations across the various plans will be dependent on the number of eligible, registered solicitors who apply and meet necessary criteria for involvement in the scheme. In the event of over subscription for any one area allocations may be made on a "first come, first served" basis.

The plan for each geographic area (by hearing centre area) will run from Monday to Sunday. Each qualifying firm will be allocated, so far as possible, an equal share of the available cover with the actual allocation depending on the number of firms registered in that area and availability to undertake the responsibilities.

Plans will be allocated in blocks of one week unless otherwise necessitated by local circumstances. All plans will be published on SLAB's website and distributed to firms and the relevant Reporters by local authority area.

APPLICATIONS FOR INCLUSION ON SCHEME

Applications will be accepted by firms and sole practitioners only. Each application must specify by name the solicitor(s) who will fulfil the firm's duty plan obligations.

All solicitors named by the firm to provide cover must be PVG registered and have SLAB as a registered body on their record and hold a practicing certificate with no restriction in relation to legal aid, as at the closing date for applications, affecting their entitlement to provide children's legal assistance. In addition all solicitors to be included on the duty plan must be accepted and registered on the Children's Legal Assistance Register.

Duty plans are split by geographic area. Areas are defined by their main hearing centre locations which are the physical locations used to facilitate Hearing Panels. It should be noted for duty plan purposes that supplementary locations out with the main centre location can be used from time to time. All supplementary locations will be broadly within the same geographic area as the main hearing centre.

At the time of applying for inclusion on the plans the firm should either have a place of business within the hearing centre area for which the duty plan is being prepared or conduct the majority of their business within that area. This requirement can be disregarded where necessitated by local circumstances. Any such decision will be taken by SLAB having regard to available resources and the circumstances applying to any one area.

A firm can be included on plans for more than one hearing centre area provided the travel time from the firm to each centre is reasonable. As an example a branch based in Ayr could apply to be included on the plans for both Ayr and Stranraer but it would not be permissible for that same firm to apply to be on the plan for Aberdeen. Any decisions about whether to allow a firm to be included on more than one plan will be taken by SLAB having regard to any relevant local circumstances.

Applications for inclusion on the plans received after the closing date will be accepted on a "back-up" basis only.

RESPONSIBILITIES OF FIRMS AND SOLICITORS

As duty solicitor you must:

- ensure that the firm has the correct professional indemnity insurance in place, as required by the Law Society of Scotland
- give priority to the performance of the services you are obliged to carry out under the duty scheme;
- attend and provide representation at any specified court or children's hearings when required to do so, including providing such representation as may be necessary even where court or children's hearings papers are not ready all in fulfilment of your obligations as duty solicitor.

Depending on the particular circumstances in any case either the Reporter or SLAB will contact the duty firm to give details of the case. Your obligation is to accept responsibility for acting in such cases.

If the duty firm as a whole cannot fulfil its obligations in terms of the plan it must notify SLAB immediately.

It is the firm's responsibility to fulfil all duty plan obligations and to ensure that representation is provided where required.

If you fail to fulfil any duties under the duty scheme without making provision for another solicitor to attend, you may be considered unsuitable for inclusion in a future duty plan. In addition, consideration may be given to removing you from the Children's Legal Assistance Register. Any other firm that, in these circumstances, is required to substitute for the duty plan firm is deemed to be acting as duty solicitor for the purposes of the plan.

WITHDRAWAL FROM SCHEME

If you wish to withdraw from the plan for any reason you must give a minimum of one month's notice to SLAB which failing you must undertake the duties you have previously agreed to carry out.

Where a solicitor moves from one firm to another firm either within or out with their existing hearing centre area they may participate in their new firm's duty scheme obligations where appropriate and subject to the appropriate application being completed and submitted to SLAB.

If a firm within a hearing centre area for which it is on the duty plan ceases to exist SLAB should be notified to allow the relevant area plan to be updated and re-issued.

PAYMENT

Claims for payment for automatic legal aid work carried out under the duty scheme are submitted on a time and line (detailed) basis in accordance with payments made in advice and assistance and ABWOR.

For more information please contact:

Margaret Russell, Deputy Team Leader, Children's Legal Assistance, on 0131 240 2690.